

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	MDL 2804
OPIATE LITIGATION)	
)	Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:)	
)	Judge Dan Aaron Polster
<i>Cases filed by Third Party Payor and</i>)	
<i>Hospital Plaintiffs</i>)	<u>BELLWETHER ORDER</u>
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On February 24, 2023, the Court held a status conference to establish a bellwether trial selection procedure for cases filed by third party payor and hospital plaintiffs against manufacturer, distributor, and pharmacy defendants. Counsel for the hospital plaintiffs represented they were actively pursuing mediation, so it would be in the best interest of all parties to defer selection of potential hospital bellwether cases at this time. The Court agrees and therefore will not now choose bellwether cases filed by hospital plaintiffs. The Court will revisit this issue depending on how mediation progresses.

Regarding cases filed by third party payors, there is no mediation currently scheduled. Accordingly, the procedures and deadlines for the bellwether selection process for third party payor cases shall be as follows:

- **March 15, 2023:** The parties shall agree, to the maximum extent possible, on the form and content of the Plaintiff Fact Sheets (PFS) to be used in the selection process. The content of the PFSs must include the proper venue for any TPP case that was direct-filed in the

MDL. Any disagreement regarding PFS content shall be brought promptly to the attention of Special Master Cohen.

- **March 15, 2023:** Defendants shall identify *up to* ten potential bellwether cases per industry group, for a total of thirty cases. Plaintiffs shall identify *at least* three cases per industry group for a total of nine cases. The cases identified by the parties must have venue in as many different federal circuits as reasonably possible to ensure the best chance for geographical diversity during the strike process.
- **June 23, 2023:** Plaintiffs shall provide a PFS for each case identified by either party. If possible, plaintiffs shall roll out these PFSs before the deadline.
- **July 7, 2023:** From the potential cases identified on March 15, 2023: (1) Plaintiffs shall propose three bellwether cases for each industry group (manufacturers, distributors, and pharmacies) and provide the selections to opposing counsel; and (2) each defendant industry group shall propose three bellwether cases for its own industry group and provide the selections to opposing counsel.
- **July 11, 2023:** For each industry group, each side shall strike two of the opposing side's selections, leaving one defendant selection and one plaintiff selection per industry group, for a total of six bellwether cases. Picks and strikes must be exercised in a manner that results in bellwether cases in *at least* three federal circuits. The parties may also simply agree on one or more bellwether cases.

IT IS SO ORDERED.

/s/ Dan Aaron Polster February 28, 2023
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE